STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DENNIS JAMES WAFFORD,

Defendant-Appellee.

UNPUBLISHED
December 29, 1998

No. 206596
Recorder's Court
LC No. 97-005155

Before: Markman, P.J., and Bandstra and J.F. Kowalski*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion to suppress, and dismissing this case. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested for driving with a suspended license after his vehicle was stopped for making a turn without using a signal. Defendant had pulled into a private driveway before being stopped. He had exited his vehicle, but had yet to close the door. After defendant was arrested, police searched his vehicle incident to the arrest. The officer saw the handle of a gun protruding from under the front seat, and he seized the weapon.

Defendant moved to suppress the evidence, asserting that the search and seizure was improper. After holding an evidentiary hearing, the court granted the motion, finding that the police had no right to search the vehicle where it was lawfully parked on private property, and defendant had already been secured at the time of the search.

When a police officer has made a lawful custodial arrest of the occupant of a automobile, he may search the passenger compartment of the vehicle incident to the arrest. *New York v Belton*, 453 US 454, 460; 101 S Ct 2860; 69 L Ed 2d 768 (1981). The search of an automobile is generally reasonable even if the defendant has already been removed from the vehicle. *United States v Hudgins*, 52 F3d 115, 119 (CA 6, 1995); *People v Fernengel*, 216 Mich App 420, 423; 549 NW2d

* Circuit judge, sitting on the Court of Appeals by assignment.

361 (1996). When the defendant has voluntarily exited the vehicle and begun walking away before the officer initiated contact, a case-by-case analysis of the reasonableness of the search is required. *Id.*

The search of defendant's car was reasonable. Although defendant had exited the vehicle before police approached him, he had not shut the car door. The fact that defendant was already secured in the police car at the time of the search does not render the search unreasonable. *Hudgins, supra*. Unlike *Fernengel, supra,* here there is no indication that police created a situation where they could arrest defendant near his vehicle. There was also no indication that defendant wished to leave the vehicle parked at its location, thus the vehicle was subject to impoundment and an inventory search would have revealed the weapon. *People v Toohey,* 438 Mich 265; 475 NW2d 16 (1991).

Further, even if a search of the vehicle was not properly related to defendant's arrest, the seizure of the weapon is supported under the plain view doctrine. Police officers are allowed to seize without a warrant items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). Officer Trotter testified that the car door was open, and he saw the handle of the weapon protruding from under the car seat. Where the weapon was in plain view, and was obviously of an incriminating character, the seizure was proper.

We reverse and remand for trial. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Richard A. Bandstra
/s/ John F. Kowalski